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November 7, 1994

Mr. Kurt N. Lindland
Assistant Regional Counsel
United States Environmental Protection Agency
Region V
77 West Jackson Boulevard
Chicago, Illinois 60604

Via Fax 312-886-0747

Re: Standard Scrap Metal/Chicago International Exporting Site - Chicago, Illinois

Dear Mr. Lindland:

As I told you during our telephone conversation this past Thursday, we have some questions regarding several statements contained in your letter of October 27, 1994. In particular, I challenged your statement that 5 ppm was "the maximum allowable limit" for PCBs in soil at this site. There are other statements which we believe are either false or unsupported by the facts as we know them. Although I have only been on this matter for two days, as compared to your own involvement, I believe a brief review of earlier findings to be significant in analyzing statements in your letter.

As you know, Region V's investigation of the 4004 South Wentworth Avenue site began as early as March, 1984. Site sampling occurred on at least two occasions in 1984 and 1985. Test results showed PCB soil contamination from approximately 50 to 2,000 ppm. A civil penalty action was commenced pursuant to 40 CFR 761.60(a) and (d).[1]

[1] Due to the failure to defend the appeal, the Appellate Court reversed the finding in favor of Standard Scrap and the company dissolved. (See 1990 WL 303875.)

PLAINTIFF'S EXHIBIT 1 5

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Judge Harwood made the following findings which are significant to positions taken by the Agency as expressed in your letter:

- The mere fact that PCBs are found in soil above 500 ppm is not sufficient evidence, in itself, to support the inference that the spillage took place after February 17, 1978.
- Where evidence indicates that Respondent may have handled a small quantity of mineral oil from PCB-contaminated transformers after February 17, 1978, but there is no evidence of how such oil could have been spilled, U.S. EPA's claim that such oil was spilled after February 17, 1978 must be rejected.

Basically, Judge Harwood concluded that there was insufficient evidence that any improper disposal, storage, use, distribution, or processing took place at 4004 South Wentworth Avenue. Please explain the support for your statement that the current operations on this property are generating contaminated material in violation of federal law, including TSCA. The history of transformer processing as set forth in Judge Harwood's findings of fact are totally consistent with TSCA and the attached U.S. EPA TSCA clarification document dated September 9, 1986 (Exhibit 1)[2]. To my knowledge, this document is still current.

Furthermore, none of the tests taken to date have identified a "new" source of PCBs on this property. In fact, all of the capacitor tests taken to date have been negative. Perhaps you have more information than I regarding "new" sources of PCBs.

Furthermore, reclaiming of shredded materials by means of a high temperature electric arc furnace, as proposed by Respondents, is consistent with the 1986 TSCA clarification and the OSWER Directive. Your letter of October 27, 1994 gives no analysis for the conclusions set forth in paragraph three regarding potential violations. The letter does acknowledge that the sampling done to date has not been confirmed.

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[2] In regards to the 1986 TSCA clarification cited above, you might note that the OSWER Directive No. 9355.4-01 (August, 1990), which you cited, confirms, on Page 16, that drained equipment, once containing 50-500 ppm PCB liquids, is not covered under TSCA Regulations.

COBURN CROFT

During our conversations, you described this situation as a "removal" action in light of the emergency posed by the site. Again, I would remind you that the Agency has had soil data relating to the 4004 South Wentworth Avenue site since 1984. Furthermore, to our knowledge, the site was not actively investigated by the Agency from 1987-1993.

In addition, I would point out that the OSWER directive states that, for industrial areas, PCB soil concentrations of 500 ppm or greater will generally constitute a principal threat. EPA has no soil data other than that taken nearly ten years ago. At that time, levels above 500 ppm appeared to be isolated to a single area of the property at 4004 South Wentworth Avenue. To my knowledge, none of the recent testing establishes a "principal threat" or an imminent or substantial endangerment to human health or the environment pursuant to either TSCA or CERCLA.

Perhaps the most obvious misstatement in your letter is the 5 ppm PCB in soil "maximum allowable limits for a residential area." When I questioned this limit, you cited the OSWER Directive. As you admitted later, the 5 ppm limit is nowhere to be found in that document. After you discovered this, you called Ms. Shining and stated that the 5 ppm limit was a "compromise number," based upon a middle ground between a 1 ppm base line standard for beginning clean-up analysis and 10 to 25 ppm base line for industrial clean-up analysis.

I would refer you to the TSCA spill cleanup policy regarding spills prior to 1978. Also, the OSWER Directive, when interpreted consistent with the character of this site, is again different from the statements in your letter. For example, please point out for our benefit where the document identifies a maximum allowable soil limit for a residential area. On page 28 of the Directive, it states:

> "A concentration of 1 ppm PCBs should therefore generally be the starting point for analysis at PCB-contaminated Superfund sites where land use is residential."

On page 26 of the Directive, it points out that the 1 ppm standard is a starting point where unlimited exposure under residential land use is assumed. As you know, the few residential homes anywhere near this site are separated by a fifteen foot fence, two fifteen foot concrete walls, a viaduct, and a railroad right-of-way. The OSWER document discusses higher point values (10 to 25 ppm) for sites where the exposure scenario

is industrial. You indicated that the site on-scene coordinator (Mr. Faryan) has been involved in 100 or so salvage yard cleanups. Perhaps you can advise me of how many times, and the circumstances, the 5 ppm cleanup level was applied or not applied at these yards. Also, we would like the Agency's analysis of how this site was classified as residential.

We have worked with both the Illinois Environmental Protection Agency and Region VII on similar sites. In these cases, recovery of metals was a primary element, as opposed to landfilling, of the site remedial plan as proposed and approved. Once the analytical data is completed and made available, we would be willing to share with you the results of our work with these agencies.

This will acknowledge receipt of your letter of November 2, 1994, and the attached 104(e) Administrative order. We are puzzled and confused by some of the conclusions set forth in the Order, particularly those relating to the generation of other contaminants (i.e., dioxins and furans). Apparently, there was an extensive fire on the South Wentworth property which predates our clients' most recent use. Has the Agency concluded that the previous site activities could not have contributed to the positive test results referenced in the Order? Because of the lack of time, further analysis of the statements in the Order is not possible. However, with respect to the South Wells property, we are unaware of any test results showing any contamination at this location.

Presently, we are unable to respond to your request for access because nowhere in the Order do you provide our clients with a sampling or work plan as such. Apparently, these documents have been requested in the past. There is no way for us to assess the reasonableness of your request. We cannot simply turn over the site to you. If you will provide us with the details of your proposed site activities, to the extent they are now known to you, we can consider them and respond intelligently. Certainly, you are not proceeding in the absence of a written sampling or work plan. Once we receive the above information, we will respond promptly to your request.

Sharing the details of your proposed sampling work is consistent with Item 19 of your Order (Page 8), which talks in terms of coordination to avoid disruption. As I explained to you on Thursday, in order to proceed smoothly and to keep our client's employees advised, coordination is absolutely essential.

COBURN CROFT

Our client is willing to cooperate with the Agency so long as this coordination is possible.

You may consider this letter responsive to your letters of October 27, 1994 and November 2, 1994.

Very truly yours,

Joseph G. Nassif

JGN:lla

cc: Ms. Carolin K. Shining

bc: Mr. Steven Cohen
Mr. Lawrence Cohen

UNI[illegible] TATES ENVIRONMENTAL PRO[illegible]N AGENCY
WASHINGTON, D.C. 20460

SEP 9 1986

OFFICE OF
PESTICIDES AND TOXIC SUBSTANCES

Ms. Toni K. Allen
Law Offices of
Piper & Marbury
888 Sixteenth Street, N.W.
Washington, D.C. 20006

Dear Ms. Allen:

This is in response to your August 12, 1986, letter, which expressed a concern on the part of the Utility Solid Waste Activities Group (USWAG) about recent interpretations under the TSCA rules for polychlorinated biphenyls (PCBs). Specifically, your letter raised the question whether there had been a change in the Agency's position regarding the disposal of drained carcasses from mineral oil transformers which, prior to being drained, contained fluid contaminated with PCBs in concentrations below 500 ppm.

As you point out in your letter, EPA regulations state that the disposal of drained PCB-contaminated equipment (including mineral oil transformers) is not regulated by the PCB disposal regulations at 40 CFR §761.60. This has been the case since the promulgation of the "PCB Ban Rule" on May 31, 1979 (44 Federal Register 31547). In the proposed Ban Rule (43 Federal Register 24802 et seq., June 7, 1978), EPA explained that "unregulated" disposal of this equipment would allow it to be sold for salvage. While EPA did not propose any restrictions on salvage operations, the Agency did solicit comments on salvage practices and the need for specific regulatory controls on salvaging to prevent undue environmental exposure to PCBs. After considering the comments and testimony received on this issue, EPA elected not to alter the proposal. The Agency concluded that because of the low concentration PCBs involved (<500 ppm), and because of the benefits derived from reclaiming valuable metal resources, the unrestricted salvaging of drained carcasses would not present an unreasonable risk. (See March, 1979, Support Document/Voluntary Environmental Impact Statement for this rulemaking). EPA has consistently followed the position that drained mineral oil (<500 ppm PCBs) carcasses can be disposed of

as scrap. (See The PCB Regulations Under TSCA: Over 100 Questions and Answers to Help You Meet These Requirements, August, 1983). Of course, the option to dispose of drained equipment as salvage is available only for drained carcasses which previously contained PCBs below 500 ppm; the salvage option is not available for "PCB Transformers" with PCB concentrations above 500 ppm.

Recently, confusion has arisen as to whether other aspects of the PCB regulations affect the salvaging of PCB Contaminated equipment. We note, for example, that while the PCB regulations do not impose specific controls on salvaging operations, scrapping practices which result in spills and other uncontrolled discharges of PCBs are regulated as improper disposal, and subject the scrapper to clean-up requirements under the PCB disposal regulations. The PCB containing fluids which have not been drained from the carcasses are always regulated as PCB wastes under these regulations.

Moreover, because salvaging involves the sale of the drained equipment to one or more scrap dealers, the question arises as to the applicability of the TSCA §6(e)(3) ban on the distribution in commerce of PCBs and PCB Items. One could construe the sale of drained equipment to a scrap dealer as distribution in commerce (and therefore prohibited without an exemption), but such a construction would not comport with the intent reflected in the Ban Rule record to treat salvaging of such equipment as a method of "disposal." Rather, each of the transactions involved in ultimately scrapping such equipment is exempted from the ban on distribution in commerce because it is either disposal or distribution in commerce for purposes of disposal. (40 CFR §761.20(c)(2), 761.20(c)(4)).

However, the regulatory definition of "disposal" imposes some limitations on the salvaging practices which may be engaged in by scrappers without an exemption from the distribution in commerce ban. To qualify as disposal, the practice must be one which would " ... otherwise complete or terminate the useful life of PCBs or PCB Items." (40 CFR §761.3). Indeed, "unregulated" disposal of drained carcasses means only that disposal in approved incinerators or chemical waste landfills is not required; it does not free the equipment (or its components) from the requirement that disposal terminate the useful life of the PCB equipment. Salvaging aimed at reclamation of the metal resources found in the case and coil generally constitutes disposal, because the PCBs are destroyed by the high temperatures employed in the reclamation process. However, where salvaging consists of disassembling the drained equipment to obtain parts intended for reuse in other equipment, the useful life of the equipment has not been fully terminated. So, the sale of any components containing detectable levels of PCBs, without an exemption, is prohibited for distribution in commerce of PCBs. Likewise, while typical metals reclamation methods can be expected to destroy residual PCBs, the sale of any metals

remaining contaminated after reclamation also is prohibited without an exemption.

In sum, salvaging of <500 ppm drained equipment is unregulated to the extent that: (1) scrapping practices do not result in spills or uncontrolled discharges of PCBs, and (2) any PCB-contaminated components are not reintroduced into commerce. Contaminated transformer components cannot be resold as parts to anyone without an exemption from the ban on distribution in commerce. Also, equipment that is rebuilt using contaminated parts from a salvaged carcass cannot be sold to another without an exemption unless the rebuilt equipment can be reclassified as "non-PCB."

I have enclosed for your reference a document entitled "Salvage Options for Drained Carcasses." This document summarizes in graphic form the relationship between salvaging and other activities regulated under the PCB regulations. Should you have additional questions, please contact Suzanne Rudzinski on 382-3935.

Sincerely,

John A. Moore
Assistant Administrator
for Pesticides and
Toxic Substances

Enclosure